

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STANLEY BRAND, M.D.,
APPELLANT-RESPONDENT**

vs.

**KANSAS CITY GASTROENTEROLOGY & HEPATOLOGY, et al.,
RESPONDENT-APPELLANTS**

DOCKET NUMBER WD71061 and WD71078

DATE: JANUARY 18, 2011

Appeal from:

Jackson County Circuit Court
The Honorable Ann Mesle, Judge

Appellate Judges:

Division Two: Joseph M. Ellis, P.J., Alok Ahuja and Karen King Mitchell, JJ.

Attorneys:

Sharon A. Coberly, for Appellant-Respondent

Arthur A. Benson, II, for Respondent-Appellants

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STANLEY BRAND, M.D., APPELLANT-RESPONDENT

v.

KANSAS CITY GASTROENTEROLOGY & HEPATOLOGY, ET AL., RESPONDENT-APPELLANTS

WD71061 (Consolidated with WD71078)

Jackson County, Missouri

Before Division Two Judges: Joseph M. Ellis, P.J., Alok Ahuja and Karen King Mitchell, JJ.

Stanley N. Brand, M.D. appeals from a judgment entered in the circuit court of Jackson County in his action against Bradley L. Freilich, M.D. and Kansas City Gastroenterology & Hepatology, LLC for disability discrimination, wrongful discharge, and negligence *per se*. Specifically, Brand challenges (1) the trial court's order of remittitur; (2) the trial court's instructions regarding his disability claim; and (3) the trial court's decision to grant Respondents' motion for directed verdict on Brand's punitive damages claims. Respondents cross-appeal challenging (1) the trial court's denial of their motion for directed verdict on Brand's claim of wrongful discharge; (2) the trial court's denial of their motion for directed verdict on Brand's claim of negligence *per se*; and (3) the trial court's granting Brand's post-trial motion to enter judgment for the sum of the jury's verdicts.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Division Two holds:

(1) The trial court did not err in denying Respondents' motions for directed verdict and JNOV regarding Brand's wrongful discharge claim when the evidence at trial established that the Respondents were knowingly attempting to circumvent the purpose and public policy of § 376.421 by excluding Brand from group health insurance coverage.

(2) The trial court erred in denying Respondents' motions for directed verdict and JNOV regarding Brand's negligence *per se* claim under § 376.421 because Brand was unable to show a violation of the statute when he was insured the entire time he was employed by the Respondents.

(3) The trial court's error regarding Brand's negligence *per se* claim resolves Brand's contention that the trial court erred in remitting the jury verdict on his negligence *per se* claim. Because the trial court should have granted the Respondent's motions for

directed verdict or JNOV regarding Brand's negligence *per se* claim, there was nothing for the trial court to remit and there is only a single verdict in favor of Brand for damages on his wrongful discharge claim.

(4) Brand's request for additur is denied since neither the trial court nor this Court has or is granting a new trial under conditions to trigger the grant of additur.

(5) The trial court did not err in instructing the jury regarding Brand's disability discrimination claim when the record does not show that the instruction affected the jury's verdict and, given that Brand requested the instruction, there is no showing of manifest of injustice or miscarriage of justice from the submission of the instruction.

(6) The trial court did not err in granting the Respondents' motion for a directed verdict regarding Brand's request for punitive damages under his disability discrimination and negligence *per se* claims because Brand did not prevail on his disability discrimination claim below and we have held that Respondents were entitled to either a directed verdict or JNOV regarding his negligence *per se* claim.

(7) The trial court erred in granting the Respondents' motion for a directed verdict regarding Brand's request for punitive damages under his wrongful termination claim when, given the evidence presented at trial, a reasonable jury could have inferred evil intent and found that the Respondents recklessly disregarded the rights of Brand by terminating his employment on the basis of Brand's impact on the group health insurance costs, while knowing that Brand's health could not be a factor in the termination decision.

Opinion by: Joseph M. Ellis, Judge

Date: January 18, 2011

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